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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. ~~390~~ 47

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPELLANT'S OPENING BRIEF

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF LOS ANGELES

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INDEX

Subject Index

	Page
I. Reference to Official Reports	1
II. Jurisdictional Grounds	2
III. Provisions of Law Involved	2
IV. Questions Presented for Review	3
V. The Facts	4
VI. Summary of Argument	11
VII. Argument	12
VIII. Conclusion	31
Appendices:	
Appendix A. Municipal Code Provisions	33
Appendix B. Penal Code Provisions	35

Table of Cases

Abbey Land & Improvement Co. v. *San Mateo County*, 167 C. 434	17
Amos v. *United States*, 255 U.S. 315	20
Ashcraft v. *Tennessee*, 327 U.S. 274	25
Bailey v. *Alabama*, 31 S. Ct. 145	15
Betts v. *Brady*, 316 U.S. 455	26
Birmingham v. *Reed*, 35 Ala. App. 31	26
Boyd v. *Sierra Madre*, 41 C.A. 520	27
Brooke v. *State*, 209 Miss. 150	24
Bruce v. *Sibeck*, 25 C.A. 2d 691	19
Buchanan v. *Warley*, 245 U.S. 60	16
Burns v. *State*, 123 Tex. Cr. 611	28
Carter v. *Illinois*, 329 U.S. 173	25
Catlette v. *United States*, 132 F. 2d 902	21
Cole v. *Arkansas*, 333 U.S. 196	26
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U.S. 282	21
Dobbins v. *Los Angeles*, 195 U.S. 223	16
Dye v. *Cox*, 125 F. Supp. 714	21

	Page
Edelman v. *California*, 344 U.S. 357	30
Ex parte Drexel, 147 C. 763	17
Ex parte Quarz, 149 C. 79	16, 27
Fiske v. *Kansas*, 47 S. Ct. 655	23
Foster v. *Illinois*, 332 U.S. 134	25
Frank v. *Mangum*, 237 U.S. 309	25
Gouled v. *United States*, 255 U.S. 298	20
Gregg v. *Bank*, 125 S.W. 2d 219	19
Grenada Lumber Co. v. *Mississippi*, 217 U.S. 433	16
Haley v. *Ohio*, 332 U.S. 596	24
Heald v. *United States*, 177 F. 2d 781	23
Hutchins v. *Edson*, 1 N.H. 139	20
Hutchins v. *State*, 22 Ala. App. 646	21
Int'l Union v. *Copper Co.*, 31 F. Supp. 1015	21
Ker v. *Illinois*, 119 U.S. 436	25
Lakewood Exp. Serv. v. *Pub. Util. Com'rs*, 1 N.J. 45	17
Laurel Hill Cemetery v. *San Francisco*, 152 C. 464	16
Lisenba v. *California*, 314 U.S. 219	24
Lochner v. *New York*, 198 U.S. 45	16
Lynch v. *United States*, 189 F. 2d 476	23
Lyons v. *Oklahoma*, 322 U.S. 596	25
Maxwell v. *Miami*, 87 Fla. 107	16
Mayo v. *Wilson*, 1 N.H. 53	20
McBeath v. *Campbell*, 12 S.W. 2d 118	19
Miller v. *Bd. of Pub. Works*, 195 C. 477	16
Missouri & N. A. R. Co. v. *State*, 92 Ark. 1	16
Nebbia v. *New York*, 291 U.S. 502	16
Norris v. *Alabama*, 294 U.S. 587	21
Olmstead v. *United States*, 277 U.S. 438	24
Ong Chang Wing v. *United States*, 218 U.S. 272	25
Osborne v. *Purdome*, 250 S.W. 2d (Mo.) 159	23
Palko v. *Connecticut*, 302 U.S. 319	20
Peo v. *Cahan*, 44 C. 2d 434	20, 30
Peo v. *Frank*, 94 C.A. 2d 740	18
Peo v. *Friedman*, 302 N.Y. 75	23
Peo v. *Gilbert*, 25 C. 2d 422	26
Peo v. *Kitchens*, 46 Adv. Cal. 257	31
Peo v. *McCormick*, 102 C.A. 2d Supp. 954	14
Peo v. *Schoepflin*, 137 N.Y. Supp. 674	27

Page

Powell v. *Alabama*, 287 U.S. 45 25
Princeton Coal Min. Co. v. ——, 176 Ind. 469 29
Rochin v. *California*, 342 U.S. 165 25
Sou. Ry. Co. v. *Virginia*, 290 U.S. 190 15
State v. *Cutter*, 36 N.J. Law 125 28
State v. *Dexter*, 32 Wash. 2d 551 17
State v. *Janice*, 6 N.J. 608 24
State v. *Mason*, 94 Utah 501 19
Sutton v. *State*, 54 Ga. App. 349 23
United States v. *La Follette*, 32 F. Supp. 953 18
United States ex rel Henson v. *Mills*, 21 F. Supp. 616 26
United States v. *Kahriger*, 210 F. 2d 565 29
Wrems v. *United States*, 217 U.S. 349 19
Whitehead v. *United States*, 155 F. 2d 460 18
Whitney v. *California*, 274 U.S. 357 29
Wolf v. *Colorado*, 338 U.S. 25 20
Yick Wo v. *Hopkins*, 118 U.S. 356 21

STATUTES

United States Code:

Section 1257(2) 2

California Penal Code:

Section 17 40
Section 20 2, 27
Section 290 2, 17
Section 644 2
Section 647.5 2
Section 836 20
Section 841 2, 19
Section 1203.4 2

California Government Code:

Section 72195 2

Los Angeles Municipal Code:

Section 52.38 30
Section 52.39 1, 2, 6, 8, 15

TEXTS

Page

Jour. Crim. Law and Criminology, "Criminal Registration" 13
Univ. of Pa. Law Review, "Criminal Registration" 13
Pennsylvania Prison Society, "Prison Journal" 31

CONSTITUTIONAL PROVISIONS

United States Constitution:

Fourth Amendment 20
Fifth Amendment 20
Sixth Amendment 26
Fourth Amendment 2, 3, 13, 15, 23

California Constitution:

Article I, Sec. 13 13
Article I, Sec. 19 3, 13

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 590

VIRGINIA LAMBERT,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee

APPELLANT'S OPENING BRIEF

I. Reference to Official Reports

Appellant hereby appeals to the Supreme Court of the United States from the final order of the Superior Court of the State of California, in and for the County of Los Angeles Appellate Department, affirming the judgment of conviction of appellant of the crime of failing to register with the police department after being convicted of a felony, in violation of Section 52.39 of the Municipal Code of the City of Los Angeles. The judgment of the Municipal Court was entered on the 25th day of April, 1955, and is unreported. The judgment of the Appellate Department of the Superior Court was entered on the 2d day of March, 1956, and is unreported, but the text thereof may be found on pages 29 through 31 of the Transcript of Record herein.

II. Jurisdictional Grounds

The grounds on which the jurisdiction of this Court is invoked, set forth fully in appellant's Jurisdictional Statement on Appeal, heretofore furnished, is that Section 52.39 of the Los Angeles Municipal Code, to be set forth fully in the Appendix hereto, and fully set forth in the Complaint, on pages 8 and 9 of the Transcript of Record, is unconstitutional, in that it is a denial of appellant's rights to due process and equal protection guaranteed by the 14th Amendment of the United States Constitution.

This appeal is taken pursuant to 28 U. S. C. 1257 (2), which is as follows:

1257. Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The judgment of the Appellate Department of the Superior Court was entered on the 2d day of March, 1956; appellant filed her notice of appeal in the said court on the 13th day of April, 1956; Order Noting Probable Jurisdiction was filed in this Court on November 19, 1956.

III. Provisions of Law Involved

In addition to the 14th Amendment to the United States Constitution and Section 52.39 of the Los Angeles Municipal Code, the following California statutes, to be set forth in full in the Appendix, are pertinent:

California Penal Code Sections 20, 290, 644, 647.5, 841, and 1203.4; California Government Code Secs. 72195, 29952

and 72604; Rules 7 and 9, Rules on Appeal from Municipal Courts and Inferior Courts in Criminal Cases.

IV. Questions Presented for Review

Appellant contends that she was denied her rights to due process and equal protection under the 14th Amendment of the United States Constitution in the following particulars, to wit:

(1) Self-incrimination is required by the ordinance under which conviction was had, in derogation of her rights under the said Amendment and Under Article I, Section 19 of the Constitution of the State of California.

(2) The security of appellant's privacy against arbitrary intrusion by the police is violated by the said ordinance.

(3) Due process and equal protection were denied by her unlawful arrest.

(4) Due process and equal protection were denied because of the bias and prejudice of the trial judge.

(5) The ordinance of whose violation appellant was convicted is too vague, indefinite, and uncertain to constitute valid criminal legislation.

(6) The complaint filed against appellant does not state a cause of action.

(7) Evidence resulting from unlawful arrest was introduced against appellant.

(8) The trial court excluded relevant facts which were proffered by appellant and which would tend to show the illegality of appellant's arrest, and thereby denied appellant equal benefit of settled principles of law.

(9) The requirement of *mens rea*, or wilful misconduct, was improperly abolished by the ordinance and by judicial interpretation thereof.

(10) Appellant was denied equal benefit of the rules of court as follows:

(a) Trial court's instructions were contrary to law.

(b) Reporter's transcript of trial testimony was not furnished appellant at expense of the people.

(c) Trial court allowed people's requests for instructions filed contrary to court rule.

(d) Trial court settled statement on appeal in a manner contrary to law.

(e) Appellate court failed to allow writ of mandate to compel trial court to proceed according to law and to furnish reporter's transcript.

(f) Trial court's judgment was an abuse of discretion and based on bias and prejudice.

(g) At the time of her arrest, appellant was only very technically in violation of the ordinance, and that because her trial court had imposed an illegal judgment and sentence upon her.

V. The Facts

The facts of this case, stated in the Engrossed Statement on Appeal on pages 15 through 21 of the Transcript of Record, may be summarized, with appropriate page references, as follows:

The facts of this case began on May 29, 1951, and June 18, 1951, on which dates appellant was convicted of the crime of forgery, in two counts (p. 16; ll. 17 through 25, T. R.). Appellant was given probation. Subsequently, in May, 1952, the probation order was modified to provide that appellant should spend the next six months in the county jail and that thereupon her probation would expire without dismissal.

On the second day of February, 1955, appellant, while in the company of her attorney-employer, was accosted on a street corner by two police officers (p. 19, ll. 28, through

p. 20, l. 12, T. R.), who, according to proffered but excluded testimony, without informing her of the reason of their arrest or detention of her, began a search of her person and effects, apparently for narcotics, by rolling up the sleeves of her coat and inspecting her veins and rummaging through her purse. When she protested this conduct, she was handcuffed and roughly shoved into the rear of the prowl car driven by the arresting officers; her attorney inquired of the arresting officers what the trouble was in an attempt to discuss the matter with them, but the officers ignored him. Appellant was then taken to the police station and there interrogated for two hours in an offensive and insulting manner, and disrobed and further searched about her person, all without being told the reason for her arrest. While she was thus detained, her attorney requested permission to talk to her, but such permission was refused by the lieutenant in charge. After their investigation and interrogation failed to reveal any evidence of present criminal activity, she was booked on a charge of failure to register as an ex-convict. That was the first time that she had been informed of any charge upon which she was being held, and no effort was made to permit her to register in lieu of being further held by the police.

On the 17th day of February, 1955, counsel for appellant filed a demurrer based on all constitutional grounds hereinabove specified. Cause was continued (R. 2, l. 6) to 3-3-55 for hearing on demurrer, at which time appellant's counsel orally and in a written brief argued that the ordinance involved was unconstitutional and called the court's attention to the facts of the arrest as hereinabove specified. The court overruled the demurrer and set trial for April 14, 1955.

After the impanelling of the jury on the last-mentioned date, the court discovered an error in the date of the alleged offense in that the year 1954 was designated, instead

of the year 1955, whereupon the court called counsel to the bench and ordered that the complaint be amended to designate the correct year (R. 16, ll. 4 through 10).

The People offered in evidence certified copies of the judgments of conviction of defendant-appellant in the cases specified in the complaint (R. 8), and a certified copy of the court order purporting to modify the probation order of defendant-appellant, as aforesaid.

Defendant objected to the offer of this or any further evidence by plaintiff on the ground that the complaint failed to state a cause of action in that Sec. 52.39 of the Municipal Code is unconstitutional as regards both the State and Federal constitutions, for the following reasons: denial of equal protection; denial of due process; conflict with general law; self-incrimination; additional punishment; cruel and unusual punishment; police abuse of the ordinance in this case; unreasonable exercise of police power; unreasonable search and seizure.

The court denied the objections of defendant as to the claim of unconstitutionality. The court held, however, that the complaint did not state a cause of action in that it failed to negative the exceptions specified in Subs. (f) of 52.39, to wit: that it did not appear from the complaint that the conviction of defendant of the designated felonies had not been set aside in a manner provided by law. The court of its own motion ordered that the complaint be amended to negative the said exceptions (R. 16, l. 36 to R. 17, l. 10).

After the said amendment, the exhibits previously offered by plaintiff were introduced in evidence over defendant's objections on the same constitutional grounds. Defendant then stipulated that she had resided in the City of Los Angeles for a seven-and-one-half-year uninterrupted period, that up to the time of her arrest her conviction had not been set aside in a manner provided by law, and that

she had not registered with the police department. Thereupon plaintiff rested its case.

Defendant took the stand (R. 17, l. 33) and offered to prove that she did not know that she had a duty to register at or before the time of her arrest. The court sustained objections to this testimony. Defendant then testified that she had no knowledge that the crime of which she had been convicted was punishable as a felony, that she fainted at the time of the pronouncement of her sentence, that she was throughout the proceedings which led to her conviction on two counts of forgery in a confused mental state and did not fully understand the nature of the proceedings, that she did not understand the difference between a crime punishable as felony and other crimes, but that she thought that, unless a person was confined in a state institution that the crime involved was not punishable as a felony, whereas the only institution in which she had been confined was the county jail as a result of her conviction, and that she had not been informed by her former attorneys, by the probation officer, or any other person that the crime she had been convicted of was punishable as a felony.

Defense rested, and the court charged the jury orally, *inter alia*, (R. 18, ll. 30 through 38), that defendant was guilty as charged if she knew, at the time of her failure to register with the Chief of Police, that she had been found "guilty of a crime punishable as felony," that forgery is a crime punishable as a felony, and that ignorance of the law requiring registration is no excuse. The jury retired and returned a verdict of "Guilty as charged."

Whereupon defendant moved the Court for a dismissal in the interest of justice on the grounds that (1) no evidence, or insufficient evidence, at least, had been introduced by the prosecution to sustain the charge in view of the circumstantial evidence rule that, where there are two possible reasonable theories, one pointing to guilt, the other

to innocence, the defendant must be found not guilt; (2) that the defendant is only very technically in violation of the ordinance involved in view of her right under Penal Code Section 1203.4 to have her conviction set aside, which right she subsequently exercised so that she comes within the exception specified in Section 52.39 (f) of the Municipal Code; and (3) that in this case a conviction would not serve the purpose of vindicating the will of the State but would instead be a vindication of the will of two police officers who had made a false arrest and were using the ordinance in an effort to justify that arrest, as an afterthought.

The Court denied the said motion. Defendant moved for arrest of judgment on the ground that the ordinance alleged to have been violated is contrary to the letter and spirit of the Federal and State Constitutions for the reasons hereinabove specified, and upon the further ground that, even if it should be conceded that the ordinance is valid on its face, that its misuse in a specific case or series of cases, including the one at bar, would render it unconstitutional in this specific instance. Defendant again offered to testify regarding the facts of her arrest, but the court again denied this proffer of proof, and denied defendant's motion to arrest judgment.

Defendant then moved for a new trial on the grounds that (1) the verdict was contrary to law and evidence, and (2) the Court misdirected the jury in matters of law and erred in the decision of questions of law arising during the course of the trial.

Defendant's motion was denied. The Court suspended the imposition of sentence and placed defendant on three years' summary probation on condition that she violate no law dealing with public health, welfare, or morals, and in particular Section 52.39 of the Municipal Code and on the

further condition that defendant pay forthwith to the Clerk of the Municipal Court the sum of $250.00.

On April 29, 1955, defendant filed her notice of appeal from the judgment of the trial court and on the 4th day of May, 1955, filed her Proposed Statement on Appeal; on the 31st day of May, 1955, the Clerk of the said Municipal Court set June 8, 1955, as the date for settling the Statement on Appeal, and (R. 6) mailed notices to the People and to defendant. At no time prior to the said date did the People prepare or serve or file any proposed amendments to petitioner's Proposed Statement on Appeal (R. 24), nor did the People at any time prior to the time set by the Court for settling the said Statement, move the Court for an extension of time in which to file amendments to the said proposed Statement, or submit an affidavit showing good cause therefor, as required by Rule 6, Rules on Appeal from Inferior Courts to the Appellate Department of the Superior Court. On June 8, 1955, after the parties appeared for settlement, the Court arbitrarily, and in contravention of the rules of court in such cases made and provided, granted the People an extension of fifteen days in which to file its Proposed Amendments.

On the 5th day of July, 1955, defendant petitioned the Superior Court for a writ of mandate, requiring the trial court to strike from the records and files the Proposed Amendments theretofore filed on the 16th day of June, but the Appellate Department of the Superior Court denied the said petition.

On the 14th day of October, 1955, the trial court, in the absence of defendant, issued its order allowing all and several the Proposed Amendments to the Statement on Appeal, and ordering defendant to engross the Statement on Appeal in accordance therewith.

At no time did affiant receive written notice of the last-stated order of the Court. On the 19th day of October,

1955 (R. 25, l. 39), and not prior thereto, affiant was informed by the clerk of the trial court, in a telephone conversation, that the court had issued its order as aforesaid; that on the 20th day of October, 1955, appellant, in open court in the presence of People's counsel, moved the court for an extension of time in which to engross the said statement and to object and be heard on People's amendments. This motion of affiant was denied. The Statement was engrossed as ordered, and the case submitted to the Appellate Department (R. 26).

On the 5th day of January, 1956, the date set for oral argument in the Appellate Department, appellant moved the Court to authorize the trial judge to order a Reporter's Transcript of the testimony of Defendant and the oral instructions of the trial court, in view of the arbitrary manner of the trial court in its settling of the said Statement on Appeal; and in further view of the fact, supplied by affidavit (See p. 24, T. R.), that appellant was and is an indigent person, and unable to pay the costs of such reporter's transcript. Defendant also pointed out that she had inadvertently omitted from her proposed statement important parts of appellant's proffered by excluded testimony (R. 26), and indicated that appellant now wished to take advantage of a 1955 Amendment to the Government Code of the State of California (Secs. 72195 thereof, for the text of which, see R. 28), permitting appeal in *forma pauperis* in misdemeanor matters (it had formerly been the rule in felony matters only). The Appellate Department denied this motion of appellant and, in its opinion to be set forth *verbatim* in the appendix hereof, sustained the trial court's judgment of conviction.

Upon *remittitur* to the trial court, appellant, by her counsel, submitted affidavits, dated April 9, 1956, and signed by a duly licensed physician of the State of California, indicating that appellant was in the fourth month of preg-

nancy; that she was in an extremely weak physical condition, because of anemia and other complications; that pregnancy would not have been advised until after an improvement in her condition; that because of these facts, and the fact that she was also emotionally upset about her condition and other personal affairs, prolonged rest and medication had been prescribed for her; that worries attendant upon a court appearance or similar legal matters might be dangerous for her or for her unborn child. Appellant moved the Court for a modification of probation, explaining also that she was indigent and could not pay the fine to the Court at that time. The Court gave her "twenty-four hours" to pay the fine or go to jail, explaining his action with the statement that appellant, by her trial and appeal, had cost the People a lot of money.

VI. Summary of Argument

The points to be hereinafter made fall logically under three heads: (A) That any criminal registration law in unconstitutional in that it requires self-incrimination, is an unreasonable exercise of police power, permits cruel and unusual punishment, encourages unlawful arrest and search, and is a denial of equal protection and due process.

(B) That the specific ordinance herein involved is unconstitutional in that it requires self-incrimination, inflicts cruel and unusual punishment, is an unreasonable exercise of police power, encourages unlawful arrest and search, is a denial of equal protection and due process, *inter alia*, in that it imposes penal sanctions in the absence of *mens rea*, and is too vague, indefinite, and uncertain to constitute valid criminal legislation.

(C) The application of the ordinance in this specific instance, and the entire criminal proceedings from the date of the order terminating her probation until the appellate

court's refusal to furnish *verbatim* record of the trial, constitute a denial of due process and equal protection.

VII

ARGUMENT

Introduction

The ordinance herein involved is contrary to the 14th Amendment to the United States Constitution and to principles relative to the said Constitution as expressed in decisions of the Supreme Court of the United States, and the procedure of the trial and appellate courts, the arresting officers, and the court which terminated appellant's probation for the felony of which she had been previously convicted, as well as the decision of the Appellate Department, as appended hereto, are not in accordance with the said constitutional principles. Specifically, the said ordinance and the proceedings pertinent hereto, constitute a denial of equal protection and of due process of law, cruel and unusual punishment; forced self-incrimination; unreasonable exercise of police power; the ordinance is too vague to constitute valid criminal legislation, permits and encourages unreasonable search and seizure, and, in the instant case, served as a vehicle for police abuse.

Counsel has made the most extensive research of this problem, as a result of which the following conclusions, which will be substantiated with citations hereinbelow, have been formulated: Although this ordinance has been in existence since 1933, twenty-four years ago, when Los Angeles City Council led the way, only a total of 47 municipalities have to date adopted similar ordinances. A grand total of five States, including California, have passed Criminal Registration Laws. In the only textual treatments of this problem that were discovered by counsel,

the conclusion was reached that these ordinances are invalid. See *Criminal Registration Law*, 27 Jour. Crim. L. & Criminology 295, 296 (1936) and Current Note: Criminal Registration Ordinances: Police Control over Potential Recidivists, University of Pennsylvania Law Review, Vol. 103, No. 1, October, 1954, which we will hereinafter refer to as the Note. Federal and State Constitution provisions principally involved are these:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. Amendment 14, United States Constitution.

In criminal prosecutions, in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and with counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; but in any criminal case, etc. (not applicable here). Sec. 13 of Article I, California Constitution.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probaable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized. Art. I, Sec. 19, Calif. Const.

Self-Incrimination

The words, "No person . . . shall be compelled, in any criminal case, to be a witness against himself" means that no person shall be compelled to make any statement, orally or in writing, anywhere or at any time, which may be *made use of* (emphasis here and elsewhere supplied) against him in any criminal prosecution, then pending or which might thereafter be brought against him. The protection afforded includes but goes beyond the assurance to a defendant on trial in a criminal case that he will not be compelled to testify against himself. The protection intended applies even before the commencement of a criminal case and secures one who may reasonably be expected to be a defendant from furnishing ammunition to be used against him. *Peo* v. *McCormick* (1951), 102 C. A. (2d) Supp. 954, 228 P. (2d) 349.

In the *McCormick* case, *supra*, each defendant was charged with having failed to register as a member of a communist organization. This case, in the Appellate Department involved in the instant case, should have been determinative of the present problem. We can think of no closer analogy than that which exists between the two ordinances involved. Although convicted persons do not compose a close-knit or organized unit, as does a communist organization, the language is nevertheless applicable. In each case registration is sought as a means of facilitating the prosecution of a *class* of persons expected by the police to become involved in criminal activity. In each case, the furnishing of the whereabouts and affiliations of the registrant gives ammunition which may be used in such prosecution.

The revelation of communist affiliation under the one ordinance is no different from the revelation of all past convictions by the convict, in view of Penal Code Sec. 644,

the Habitual Criminal Statute of California; for by the supplying of such information law enforcement agencies are given leads, records, and admissions, upon which prosecution under the cited statute may be based, and very commonly is based. It is one thing for law-enforcement agencies to obtain by their own investigation, evidence of habitual criminality, utilizing F. B. I. records or other reports in their efforts. It is quite another to require a potential defendant to assist them by enforced revelation of the facts upon which such a prosecution may be based.

The furnishing of the registrant's address, along, with continuance subjection of the registrant to police surveillance, is such facilitation of possible future prosecution, as to be contrary to the principle against self-incrimination. A *fortiori*, this is true in view of the Habitual Criminal Statute, which makes habitual criminality a substantive offense, while Sec. 52.39 of the Municipal Code requires a full disclosure of habitual criminality, facilitating proof thereof and supplying admissions of the defendant relative thereto.

While it has been held that due process of law does not necessarily include the privilege against self-incrimination, when such privilege is provided for by a State, it must be uniformly applied, and discrimination in that regard constitutes a denial of due process, or equal protection. This principle is implicit in the statement that equal protection of the laws includes the right to be tried in the same manner as others accused of crime are tried. *Bailey* v. *Alabama*, 31 S. Ct. 145, 219 U. S. 219, 55 L. Ed. 191.

Unreasonable Exercise of Police Power

It is established beyond question that every State power, including the police power, is limited by the inhibition of the 14th Amendment. *Sou. Ry. Co.* v. *Virginia*, 290 U. S. 190, 78 L. Ed. 260, 54 S. Ct. 148.

The 14th Amendment requires that governmental regulation shall be accomplished by methods consistent with due process; the due process clause is a limitation upon an improper exercise of the police power of the States in that it prevents an arbitrary or unreasonable exercise of the power through laws or regulations. *Nebbia* v. *New York*, 291 U. S. 502, 78 L. Ed. 940, 54 S. Ct. 505, 89 A. L. R. 1469; *Grenada Lumber Co.* v. *Miss.*, 217 U. S. 433, 54 L. Ed. 826, 30j S. Ct. 535; *Maxwell* v. *Miami*, 87 Fla. 107, 100 So. 147, 33 A. L. R. 682; *Dobbins* v. *Los Angeles*, 195 U. S. 223, 49 L. Ed. 169, 25 S. Ct. 18.

The police power extends only to such measures as are reasonable; police regulations must be reasonable under all circumstances. *Lochner* v. *New York*, 198 U. S. 45, 49 L. Ed. 937, 25 S. Ct. 539, 3 Ann. Cas. 1133; *Missouri & N. A. R. Co.* v. *State*, 92 Ark. 1, 121 S. W. 1930, 31 L. R. A. (N. S.) 861, 135 Am. St. Rep. 164; *Miller* v. *Board of Public Works*, 195 Cal. 477, 234 P. 381, 38 A. L. R. 1479; *Ex parte Quarz*, 149 C. 79, 84 P. 766, 5 L. R. A. (N. S.) 183; 117 Am. St. Rep. 115, 9 Ann. Cas. 747; *Laurel Hill Cemetery* v. *San Francisco*, 152 C. 464, 93 P. 70, 14 Ann. Cas. 1080, 27 L. R. A. (N. S.) 260, aff'd in 216 U. S. 358, 54 L. Ed. 515, 30 S. Ct. 301.

It is a general rule that in order for a police measure to be reasonable, the means adopted must be reasonably necessary and appropriate for the accomplishment of the legitimate objects falling within the scope of the power. *Buchanan* v. *Warley*, 245 U. S. 60, 92 L. Ed. 149, 32 S. Ct. 16, L. R. A. 1918, C. 210, Ann. Cas. 1918 A. 1201; *Miller* v. *Board of Public Works*, 195 Cal. 477, 234 P. 381, 38 A. L. R. 1478, writ of error dismissed in 273 U. S. 781, 77 L. Ed. 889, 47 S. Ct. 460.

Although the ends sought to be achieved by certain legislative enactments are within the police power, the methods and procedures provided may be constitutionally objec-

tionable as unreasonable, arbitrary, or oppressive, and not really designed to accomplish the expressed purpose of the act. *State* v. *Dexter,* 32 Wash. (2d) 551, 202 P. (2d) 906, 13 A. L. R. (2d) 1081, aff'd 338 U. S. 863, 94 L. Ed. 529, 70 S. Ct. 147.

A regulation which ostensibly seeks the protection of the public safety but which factually runs counter to the common experience of mankind is unreasonable. *Lakewood Exp. Service* v. *Pub. Utility Comr's,* 1 N. J. 45, 61 A. (2d) 730, 7 A. L. R. (2d) 1259. See also *Abbey Land & Improvement Co.* v. *San Mateo County,* 167 C. 434, 139 P. 1068; *Ex parte Drexel,* 147 C. 763, 82 P. 429.

That the present ordinance is unreasonable is clearly demonstrated by comparing it with Penal Code Section 290 (set forth in full in Appendix), which requires that persons who are to be registered as ex-felons must be informed of this duty in writing at the time of their release from official custody. Under the local ordinance herein involved, no such prior notice is required, and since the "crime" involved is not *malum in se* and the intended violators have no means of notice in the due or ordinary course of affairs of the fact that they are in violation of a relatively obscure provision of the municipal code, the enforcement of this ordinance becomes unreasonable, oppressive, and a vehicle of police abuse. It is suggested that this particular defect might be mitigated by the requirement that, before a person be charged with this offense, he first be given the alternative of registering, if indeed the purpose of the ordinance is to require registration rather than put ignorant offenders in jail for a technical and unwitting violation of law. The suggested amendment would prevent the police from selective harassment of individuals who offend them or whom they for reasons of their own, and not the will of the people, single out for

discrimination. Support for this position is lent by the holding that duty exists to inform offender of conditions of probation. *U. S.* v. *Follette*, 32 F. Supp. 953; *Whitehead* v. *U. S.*, 155 F. 2d 460, 329 U. S. 747; *Peo* v. *Frank*, 211 P. (2d) 350, 94 C. A. (2d) 740.

The ordinance is further unreasonable in that it requires a person, after one conviction, when there is not indication of a tendency to recidivism, and when the crime involved is not, according to statistical, scientific, and sociological knowledge, inherently recidivistic, to submit to police surveillance *for the rest of his natural life.* This is so contrary to our basic American concepts of justice and fair play, individual dignity and liberty, and to the due process principle that a man is presumed innocent and law-abiding, as to offend the sense of humanity and decency. The restrictions, the humiliation, the constant reminder of a long past offense for which a penalty has been exacted by society, and the available police abuse permitted by this ordinance are entirely out of proportion to any avowed and valid purpose of police regulation.

It is submitted that the only probable result of having an ordinance such as this one on the books is to serve the purpose of police officers in selective harassment or an attempt to cover up a false arrest and imprisonment. The ordinance does not prevent crime, nor aid substantially, if at all, in the detection of criminals. Almost no one knows of the existence of the ordinance at all. Those who do, and who are also inclined toward crime, will in most cases not comply with the requirement since they know as a practical matter that it will not come into play until they have been arrested for some subsequent offense and that at that time failure to register will not usually aggravate their punishment. On the other hand, by not registering, they will lessen somewhat the possibility of detection by the police, who at least will not be enabled

to haul them in for questioning whenever a crime in the category it is felt they might commit, is perpetrated. Those who know of the ordinance and who want to be law-abiding and forget their past criminal record will register. Thus, in addition to being an infringement of personal privacy and dignity, the ordinance serves no valid purpose of police regulation, particularly in view of modern means of crime detection which render unnecessary such a measure as this one.

The balance between police powers and due process is more or less in a state of unstable equilibrium, changing with sociological and economic development. *State* v. *Mason*, 94 Utah 501, 78 P. (2d) 920, 117 A. L. R. 330.

Cruel and Unusual Punishment

The prohibition against cruel and unusual punishment has been held violated by a statute providing, *inter alia*, that the convicted person should be *subject to police surveillance for life*. *Weems* v. *United States*, 217 U. S. 349, 30 S. Ct. 544, 19 Ann. Cas. 705; and see 35 L. R. A. 564.

Unlawful Arrest and Search

The view has been taken that any arrest or imprisonment, except as allowed or required by law, is a denial of due process. *McBeath* v. *Campbell*, 12 S. W. (2d) 118; *Gregg* v. *Bank*, 125 S. W. (2d) 319.

Search of the person is unlawful when the purpose of the search is to discover grounds, as yet unknown, for arrest or accusation. *Bruce* v. *Sibeck*, 25 C. A. (2d) 691, 78 P. (2d) 741.

The person making the arrest must inform the person to be arrested . . . of the cause of his arrest. California Penal Code, Sec. 841.

A peace officer may make an arrest . . . without a warrant,

1. For a public offense committed or attempted in his presence.

2. When a person arrested has committed a felony, although not in his presence.

3. When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.

5. At night, when there is reasonable cause to believe that he has committed a felony. Section 836, Penal Code of Calif.

The guarantee of the 4th Amendment applies to the states through the 14th Amendment. *Wolf* v. *Colorado*, 338 U. S. 25.

Evidence obtained in violation of Constitutional guarantees is inadmissible. *Peo* v. *Cahan*, 44 (2d) 434; 282 P. (2d) 905.

The Fourth and Fifth Amendments, per the 14th, bar the use of evidence obtained through an unreasonable search and seizure. *Gouled* v. *U. S.*, 255 U. S. 298; *Amos* v. *U. S.*, 255 U. S. 313; *Weeks* v. *U. S.*, 232 U. S. 383.

The security of one's privacy against arbitrary intrusion by the police—which is at the core of the 4th Amendment—is basic to a free society. It is therefore implicit in the concept of ordered liberty. *Palko* v. *Connecticut*, 302 U. S. 319, 58 S. Ct. 149, 82 L. Ed. 288.

An arrest must be made in pursuance of some method warranted by the established principles of law in the jurisdiction where it is made. *Hutchins* v. *Edson*, 1 N. H. 139; *Mayo* v. *Wilson*, 1 N. H. 53.

Under the rationale and principle of California's *Cahan*

Case, *supra*, to prevent lawless enforcement of the law, it should be held that the court does not acquire jurisdiction of the person by an arrest contrary to law, or in contravention of due process. See *Hutchins* v. *State*, 119 So. 250, 22 Ala. App. 646.

The due process clause of the Constitution of the United States avouches the right to be free of arrest save on probable cause. *Dye* v. *Cox*, 125 F. Supp. 714; *Int'l Union* v. *Copper Co.*, 31 F. Supp. 1015; and assures the right to be at liberty and to be imprisoned only for cause. *Catlette* v. *U. S.*, 132 F. 2d 902; *Dye* v. *Cox*, 125 F. Supp. 714.

Equal Protection

That the ordinance infringes the Federal and State requirements of reasonable classification is shown *supra* under the heading Unreasonable Use of Police Power. Furthermore, to lump together in a single classification for the purpose of registration persons convicted of offenses not inherently recidivistic or convicted on only one occasion, with recurrent or recidivistic criminals, constitutes improper classification, even if it should be held that recidivistic criminals might validly be required to register.

Even if a law is not discriminatory upon its face, if the evidence of practices under that law indicates a history of discriminatory application, the law violates equal protection. *Yick Wo* v. *Hopkins*, 118 U. S. 356; *Norris* v. *Alabama*, 294 U. S. 587; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282.

That the ordinance here involved has been given a discriminatory application by the police is so much a matter of common knowledge as to be subject to judicial notice. The facts of this police discrimination are ably annotated in the University of Pennsylvania Note, in the text and

notes thereof at and following note 220 thereof. The writers conclude from their analysis of the facts and law that the stated objective of the ordinance (to aid in crime prevention and detection) is a thinly disguised excuse for a species of police brutality consisting of mass arrests, arrests without sufficient cause, and selective harassment of individuals who incur police displeasure. Even though such abuse may not have been intended by the framers of the measure, that such has been the result renders the law unconstitutional in operation. The attitude and practices of enforcement officials in Los Angeles is specifically supplied by the Note in note 17 thereof as follows:

"The immediate objectives of these ordinances appeared to be the incarceration or expulsion of undesirables, rather than the registration of criminals. Referring to the adoption of the Los Angeles, California, ordinance, it was reported that District Attorney Buron Fitts and Robert P. Stewart, chief deputy district attorney, who framed the ordinance, and Chief of Police James Davis, one of its chief supporters, declare, however, that the very fact that dangerous ex-convicts will not register is the strength of the law.

"'In the past,' says Chief Davis, 'After every major crime we have picked up many suspects with criminal records. In some of these cases we have been sure that we had in custody the guilty men, but we often lacked legal proof to convict. Under the new registration laws, each of these men can now be dealt with, not for the crime suspected, but for failing to register.'"

That the situation in Los Angeles is one in which the ordinance serves as a trap for the unwary is shown by Appendix C of the said Note, in which it is indicated that only one in ten ex-convicts in Los Angeles area has registered with the Police Department. That, in the case at bar, the ordinance was used, not to vindicate the will of

the state, but in an effort to cover up a false arrest and imprisonment and deprivation of the legal and constitutional rights of the defendant, is shown by the proffered testimony of defendant outlined hereinabove.

Equal protection of the laws includes the right to be tried in the same manner as others accused of crime are tried. *Lynch* v. *United States*, 189 F. (2d) 476.

Equal protection of the laws may be violated by consistent discrimination in the enforcement of a criminal statute. *Peo* v. *Friedman*, 96 N. E. (2d) 184, 302 N. Y. 75.

As applied, a statute may be an arbitrary and unreasonable exercise of the police power of the State, unwarrantably infringing the liberty of accused in violation of the due process clause of 14th Amendment. *Fiske* v. *Kansas*, 47 S. Ct. 655, 274, U. S., 380, 71 L. Ed. 1008.

Any major change invalidates an indictment and deprives the Court of the power to try an accused on it. *Heald* v. *United States*, 177 F. (2d) 781. The legislature may not authorize an amendment during trial in a matter of substance so as to prejudice accused. *Sutton* v. *State*, 188 S. E. 60, 54 Ga. App. 349.

In two instances, as appears on the face of the facts stated in the Engrossed Statement, the trial court, of its own motion, amended the complaint herein, thereby subjecting defendant to double jeopardy and denying due process.

Equal protection of the laws entitles one accused of crime to protection from injury by the officers having him in custody. *Lynch* v. *United Staies*, 189 F. (2d) 476. In the instant case, the facts show flagrant violation of the most fundamental rights of appellant by the arresting officers.

Prejudice and bias on the part of the trial judge may constitute a denial of equal protection of the laws. *Osborne* v. *Purdome*, 250 S. W. (2d) 159 (Mo.). In the in-

stant case, every statement and act of the trial judge reported herewith showed such an inclination to assist the prosecution and arbitrarily disregard rules of court favoring defendant as to clearly reveal such a state of bias and prejudice as to make a fair trial impossible.

A discriminatory denial of the right to appeal is a violation of the equal protection clause. *State* v. *Janiec*, 8 A. (2d) 94, 6 N. J. 608, cert. denied 71 S. C. 1007, 341 U. S. 955, 95 L. Ed. 1376.

No distinction can be taken between the Government as prosecutor and the Government as judge. If the existing code does not permit district attorneys to have a hand in such dirty business, it does not permit the judge to allow such iniquities to succeed. Holmes, J., dissenting in *Olmstead* v. *United States*, 277 U. S. 438, 470, 48 S. Ct. 564, 72 L. Ed. 944, 66 A. L. R. 376.

Due Process

(In General)

As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. *Lisenba* v. *California*, 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280.

State methods of dealing with persons charged with crime offend the constitutional requirement of due process where they may fairly be deemed to be in conflict with deeply rooted feelings of the community. Frankfurter, J., in *Haley* v. *Ohio*, 332 U. S. 596, 92 L. Ed. 224, 68 S. Ct. 302.

Denial of due process may result from the introduction of evidence which was inadmissible because it was obtained in violation of constitutional rights. *Brooks* v. *State*, 209 Miss. 150, 46 So. (2d) 94.

Due process of law precludes defining, and thereby confining the standards required of states in their criminal

prosecutions more precisely than to say that prosecutions cannot be brought about by methods that offend "a sense of justice." *Rochin* v. *California*, 342 U. S. 165, 92 L. Ed. 183, 72 S. Ct. 205, 25 A. L. R. (2d) 1396; *Foster* v. *Ill.*, 332 U. S. 134, 21 L. Ed. 1955, 67 S. Ct. 1716.

The admission of evidence for or against the accused must be according to the established rules in such state in all such cases, and the punishment must be authorized by law. *Powell* v. *Alabama*, 287 U. S. 45, 77 L. Ed. 158, 53 S. Ct. 55, 84 A. L. R. 527; *Frank* v. *Mangum*, 237 U. S. 309, 59 L. Ed. 969, 35 S. Ct. 582; *Ong Chang Wing* v. *United States*, 218 U. S. 272, 54 L. Ed. 1040, 31 S. Ct. 15, 48 L. R. A. (N. S.) 1084; *Ker* v. *Illinois*, 119 U. S. 436, 30 L. Ed. 421, 7 S. Ct. 225.

A state must give one whom it deprives of freedom the opportunity to open an inquiry into the intrinsic fairness of the criminal process even though it appears proper on the surface. *Carter* v. *Illinois*, 329 U. S. 173, 19 L. Ed. 172, 67 S. Ct. 216.

The suppression of evidence favorable to the accused by the prosecution is a denial of due process of law, entitling the accused to release from custody. *Ashcraft* v. *Tenn.*, 327 U. S. 274, 90 L. Ed. 667, 66 S. Ct. 544.

The 14th Amendment to the Federal Constitution is a protection against criminal trials in state courts conducted in such a manner as amounts to a disregard of fundamental fairness and in a way that necessarily prevents a fair trial. *Lyons* v. *Okla.*, 322 U. S. 596, 88 L. Ed. 1481, 64 S. Ct. 208.

The fact that confessions introduced into evidence on trial of the criminal case in a state court were conclusively adjudged by the decision of the highest court of the State to be admissible under the state law, notwithstanding the circumstances under which they were made, does not answer the question whether due process was lacking. *Lisenba* v. *Cal.*, 86 L. Ed. 166.

The proceedings in the appellate court, as well as those in the trial court, must be considered in determining whether due process of law has been afforded or denied. *Cole* v. *State of Ark.*, 68 S. Ct. 514, 338 U. S. 196, 92 L. Ed. 644; *Frank* v. *Mangum*, 35 S. Ct. 582, 237 U. S. 309, 59 L. Ed. 969; *United States, ex rel. Henson* v. *Mills*, 21 F. Supp. 616; *Birmingham* v. *Reed*, 44 So. (2d) 607, 35 ALa App. 31.

The procedural rules of the courts are a part of due process of law and must be observed in the interests of orderly functioning of the administration of justice. *Peo* v. *Gilbert*, 25 C. (2d) 422, 154 P. (2d) 657.

Where the court or an officer thereof has knowledge requiring the exercise of a duty on behalf of the accused, failure to exercise such duty constitutes a denial of due process.

The phrase "due process of law" formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights; and its asserted denial is to be tested, not as a matter of rule, but rather by an appraisal of the totality of the facts involved in a particular case. *Betts* v. *Brady*, 316 U. S. 455, 86 L. Ed. 1595, 62 S. Ct. 1252.

Although the due process clause of the 14th Amendment does not incorporate, as such, the specific guarantees found in the 6th Amendment, a denial by a State of the rights or privileges specifically embodied in that Amendment may, in a given case, operate to deprive a defendant of due process of law. *Betts* case, *supra*.

The law of searches and seizures is the interplay of the 4th and 5th Amendments, and it reflects a dual purpose: protection of the individual against compulsory production of evidence and protection of the privacy of the individual, his right to be let alone.

It can be seen plainly that the regulation under this or-

dinance has no relation to the protection of health, comfort or well-being of the community, but is a clear invasion of personal and property rights under the guise of police regulation, and is therefore unconstitutional. *Ex parte Quarz*, 149 Cal. 79; *Boyd* v. *City of Sierra Madre*, 41 C. A. 520.

Mens Rea

It is a time-honored proposition that the existence of a crime requires two essential elements. . . . The other is internal, and is generally referred to as criminal intent, guilty knowledge or intent, or *mens rea*. Cal. Pen. Code, Section 20.

It may be seen that the element of wilfulness is absent from the evidence in this case. The contention that it is not necessary to show wilfulness or criminal intent in the instant connection is erroneous. The exception to the general common-law rule requiring *mens rea* should be extended with caution. In fact, many scholars of the subject have held that any departure from the *mens rea* rule is unfortunate and unnecessary. It is one thing to hold a person civilly liable for negligence; quite another to brand him a criminal when his intentions are unimpeachable. Surely the exception should not be applied to registration laws, which should be required to be brought home to the intended registrants, as under Section 290, Penal Code, before prosecution may be had. This is elementary constitutional justice. The exception to the *mens rea* doctrine has been limited to traffic matters, alcoholic beverage law violations, pure food and drug laws, and similar matters, and as to such situations, the standard applied has been as follows; that the acts prohibited be a *menace to public health and morals* and be classed as *mala prohibita*. *Peo* v. *Schoepflin*, 78 Misc. 62, 137 N. Y. Supp. 675.

Continuing in the said case, the court held: "I appre-

ciate that the purpose of the legislature to dispense with the necessity of providing specific criminal intent, either expressly or impliedly, in any case *should be clear*. . . . Since the general situation involved strikes me as one warranting legislative action in the exercise of the police power for the purpose of protection of the public from *physical injuries* and of promoting the public safety thereby."

To dispense with the *mens rea* requirement, as done by the trial and appellate courts in the instant case, in connection with the criminal registration ordinance is to make it a "trap for the unwary." Although as a basic premise, ignorance of the law is no excuse for its violation, there are situations in which knowledge of the law and knowledge of facts bringing one within a specific law, are inseparable. In other words, there are exceptions to this general rule, as where the law is not settled, is obscure, or is susceptible of more than one reasonable construction. *State* v. *Cutter*, 36 N. J. Law 125; *Burns* v. *State*, 123 Tex. Cr. 611, 61 S. W. (2d) 512. This exception should obviously be applied in the instant situation in view of the unsettled and obscure nature of the California distinction between felonies and misdemeanors, particularly as to the Court's discretion therein, as otherwise an unconscionable burden is placed on the shoulders of potential offenders in that they are required to make a legal determination and at the same time are unable to assert their ignorance or good faith.

Furthermore, an exception may be seen to apply generally in cases where there is a duty to act, and the offense is thus a failure or omission to act. Before such an omission can be wilful, there is an implied knowledge of the duty imposed by the statute or ordinance. This principle has been expressed as follows: The term "wilful failure," giving a right of action for injuries occasioned by any violation of or wilful failure to comply with, the provisions of the act, implies more than mere non-conformity, in-

attention, thoughtlessness or heedlessness, and goes to the intent implied in failing to do the thing after attention is called to it or notice given under the statute by the mine inspector, and implies the intentional and conscious violation and persistent refusal or neglect not necessarily with evil or malicious intent; it amounts to more than mere passive negligence; it is active refusal. *Princeton Coal Min. Co.*, 176 Ind. 469.

The Federal Government has gone even farther. A refusal by one subject to requirements of registration and payment of Gamblers' Occupational Tax, to register on form requiring certain information he deemed self-incriminatory, was not "wilful" within contemplation of provisions subjecting a wilful violafor to criminal penalties, when the law at the time of the refusal was unsettled in that it had not as yet been determined that Gamblers' Occupational Tax Act did not require a taxpayer to give information protected under the privilege against self-incrimination. *United States* v. *Kahriger*, 210 F. (2d) 565. It is submitted that it is a denial of due process to penalize an act of omission without proper prior information regarding a duty to act.

Vagueness of Ordinance

To satisfy the constitutional requirement of due process, a statute or ordinance must be sufficiently explicit, in its description of the acts, conduct or conditions required or forbidden, to prescribe the elements of the offense with reasonable certainty, fix an ascertainable standard of guilt, and make known to those to whom it is addressed what conduct on their part will render them liable for its penalties, and not be so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. *Whitney* v. *California*, 47 S. Ct. 741, 274 U. S. 357, 71 L. Ed. 1095.

On the face of it, the ordinance herein considered is too vague to be valid criminal legislation, and furthermore, constitutes an invalid delegation to the chief of police of legislative power. The language of Penal Code Section 647.5, included by reference in the instant ordinance, was held, in an uncontradicted dissenting opinion in *Edelman* v. *California*, 344 U. S. 357, 73 S. Ct. 293, 97 L. Ed. 387, Headnote 9 (the majority opinion did not consider the legal issues, but dismissed for procedural irregularities), too vague to comply with due process requirements of certainty so fundamental to valid criminal legislation. The same may be said of the expression "punishable as a felony," in view of the California definition of felony and misdemeanor; and further of the paragraph 10 of Section 52.39, Municipal Code, "Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive." Such a catch-all phrase may be appropriate to a constitution outlining legislative power of a residuary nature. When included in a statute, however, it is an unconstitutional grant of legislative power, in the instant case, to the Chief of Police.

The Cahan Case

Under the principal holdings of the *Cahan* case (*Peo* v. *Cahan*, 44 C. (2d) 434; 383 P. (2d) 905) and subsequent Supreme Court of California decisions, a false arrest may no longer be made the basis of prosecution. In the instant case, under evidence which was erroneously excluded by the trial court, it would have been made to appear that the arrest herein was made in the daytime, for a misdemeanor not committed in the officer's presence, or at all; that there was not even any allegation of probable cause, or charge of felony, to justify arrest therefor. Although

the *Cahan* case had not been decided at the time of the arrest herein, the principle of law therein involved was substantially raised by appellant upon demurrer, at the trial, and upon appeal.

Ordinarily the admissibility of evidence will not be reviewed on appeal in the absence of proper objection in the trial court, but this rule is not applicable to appeals based on the admission of illegally obtained evidence in cases that were tried before the Supreme Court decision holding such evidence inadmissible. *Peo* v. *Kitchens*, 46 Adv. Cal. 257.

VIII. Conclusion

Section 52.39 of the Municipal Code interferes with rights of personal dignity and privacy in an unnecessary, arbitrary, and unjustifiable manner, thereby transgressing our constitutional right to liberty and the pursuit of happiness. Conditions do not warrant such interference with human rights. The ordinance is a step backward toward the criminal jurisprudence of the Dark Ages, to the Star Chamber, the Inquisition, Bills of Attainder, and other methods against which our constitutional guarantees were provided in our basic governmental document. While it is true that its enforcement would facilitate police activity, so also would wire-tapping, self-incrimination, search without warrant, and other effective methods such as forced confessions, but the American Way is opposed to such facilitation of criminal prosecution at the expense of basic human liberties.

In the editorial section of the Prison Journal published in April, 1936, by the Pennsylvania Prison Society the following comment appeared:

"We are utterly opposed to the Criminal Registration Law in principle because we believe, with some competent authorities, that it is unconstitutional. A more important

objection, perhaps, than this, is the psychic effect which it has on every man who has committed a crime. It opens up old sores. It reaffirms the conviction which exists in the minds of too many of these people that the police are anxious to get something on them.

"Moreover, it is extremely doubtful that the law accomplishes anything. The men who want to be law-abiding and forget their past criminal record will register, while those who are engaging in criminal activities of course will not.

"We are prone to forget that voluntary association and cooperation are fundamental principles of democracy. Any departure from these principles in law-making invites resistance, and strikes at the roots of democracy."

We respectfully submit to this Honorable Court that the ordinance herein involved is in fact so restrictive, so unreasonable, so abusive, as to be invalid police power legislation; that it should be held unconstitutional; and that the conviction of appellant should be reversed.

Respectfully submitted,

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Attorney for Appellant

APPENDIX A

Municipal Code of the City of Los Angeles, Secs. 52.39, 52.38

Section 52.39: (Excerpts)

(a) It shall be unlawful for any convicted person to be or remain in the City of Los Angeles for a period of more than five days, without, during such five-day period, registering with the Chief of Police in the manner hereinafter prescribed.

(d) Every person required by this section to register shall do so by filing with the Chief of Police of the City of Los Angeles a statement in writing, signed by such person, upon a form prescribed and furnished by the Chief of Police, giving the following information:

1. His true name and all aliases which he has used or under which he may have been known;

2. A full and complete description of his person;

3. The kind, character and nature of each crime of which he has been convicted;

4. The name under which he was convicted in each instance and the date thereof;

5. The place where each of such crimes was committed and the place or places of conviction;

6. The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced;

7. The location and address of his residence, stopping place, living quarters or place of abode in the City; if more than one residence, stopping place, or place of abode, that fact must be stated and the location and address of each given;

8. A statement of the kind of residence, stopping place or place of abode in which he resides, whether the same is temporary or permanent, *i.e.*, whether the same is a private residence, hotel, apartment house or other building or structure;

9. The length of time he has occupied such place of

residence, stopping place or place of abode; and the length of time he expects or intends to remain in the City;

10. Such other and further information as may be required by the Chief of Police for the purpose of aiding and assisting in carrying into effect the provisions and intent of Sections 52.38 to 52.43, inclusive.

Section 52.38 supplies the definition of "convicted person":

(a) Any person, who, subsequent to January 1, 1921, has been or hereafter is convicted of an offense punishable as a felony in the State of California, or who has been or who is hereafter convicted of any offense in any place other than the State of California, which offense, if committed in the State of California, would have been punishable as a felony;

(b) Any person who, subsequent to January 1, 1921, has been or hereafter is convicted in the State of California, or elsewhere, of the violation of any law, whether the same is or is not punishable as a felony:

1. Relating to or regulating the possession, distribution, furnishing, or addiction to the unlawful use of any narcotic as defined and referred to in Division 10 of the California Health and Safety Code.

2. Regulating or prohibiting the carrying, possession, or ownership of any concealed weapon, or deadly weapon, or any weapon capable of being concealed, or regulating or prohibiting the possession, sale or use of any devise, instrument, or attachment designed or intended to be used for the purpose of silencing the report, or concealing the discharge of any firearm;

3. Regulating or prohibiting the use, possession, manufacture, or compounding of tear gas, or any other gas, which may be used for the purpose of temporarily or permanently disabling any human being.

(d) Any person who has been, since January 1, 1921, or who hereafter is convicted of a crime in the State of California, under the provisions of one or more of the following sections of the Penal Code of California, to wit: 264, 265, 286, 288, 288a; 647a or of Subdivisions 1 and 2 of Sections

311 of said Code, or who has been since January 1, 1921, or hereafter is convicted in any place other than the State of California of an offense which, if committed in this State, would have been punishable under one or more of said sections.

1. Any person who has since January 1, 1945, or who hereafter is convicted of a crime in the State of California under the provisions of Section 647(5) of the Penal Code of the State of California, or who has been since January 1, 1945, or hereafter is convicted in any place other than the State of California of any offense which, if committed in this State, would have been punishable under said section.

(e) Any person who has been, since January 1, 1921, or hereafter is convicted in the State of California or elsewhere of any attempt or conspiracy to commit any offense described or referred to in this section.

(f) Provided, however, that any person, except as hereinafter set forth, whose conviction is or has been set aside in a manner provided by law, shall not be deemed a convicted person; provided further, however, that one who has been convicted of the commission of one or more of the crimes referred to in Subdivision (d) hereof, and whose conviction has been set aside at the termination of probation, and in connection therewith, shall be considered a convicted person, as such term is used in Section 52.38 to Section 52.43 inclusive.

APPENDIX B

California Penal Code Sections 20, 290, 644, 647.5, 841, and 1203.4

Section 20. To constitute crime there must be unity of act and intent. In every crime or public offense there must exist a union, or joint operation, of act and intent, or criminal negligence.

Sec. 290. Registration of sex offenders.

Any person who, since the first day of July, 1944, has been or is hereafter convicted in the State of California

of the offense of assault with intent to commit rape or the infamous crime against nature, under Section 220, or of any offense defined in Sections 266, 267, 268, 285, 286, 288, 288a, subdivision 1 of Section 647a, subdivision 3 or 4 of Section 311 of this code, or of any offense involving lewd and lascivious conduct under Section 702 of the Welfare and Institutions Code; or any person who since said date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses; or any person who since said date or at any time hereafter is discharged or paroled from a penal institution where he was confined because of the commission or attempt to commit one of the above-mentioned offenses; or any person who since said date or at any time hereafter is determined to be a sexual psychopath under the provisions of Chapter 4 of Part 1 of Division 6 of the Welfare and Institutions Code; or any person who has been since said date or is hereafter convicted in any other State of any offense which, if committed or attempted in this State, would have been punishable as one or more of the above-mentioned offenses, shall within 30 days of his coming into any county or city, or city and county in which he resides or is temporarily domiciled for such length of time, register with the chief of police of the city in which he resides or the sheriff of the county if he resides in an incorporated area.

Notice of duty to register; prisoner or inmate. Any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where he was confined because of the commission or attempt to commit one of the above mentioned offenses or is released from a state hospital to which he was committed as a sexual psychopath under the provisions of Chapter 4 of Part 1 of Division 6 of the Welfare and Institutions Code shall, prior to such discharge, parole, or release, be informed of his duty to register under this section by the official in charge of the place of confinement or hospital and the official shall require the person to read and sign such form as may be required by the State Bureau of Criminal Identification and Investigation, stating that the duty of the person to register under this section has been explained to him. The official in charge of the place

of confinement or hospital shall obtain the address where the person expects to reside upon his discharge, parole, or release and shall report such address to the State Bureau of Criminal Identification and Investigation. The official in charge of the place of confinement or hospital shall give one copy of the form to the person, and shall send two copies to the State Bureau of Criminal Identification and Investigation, which bureau, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole, or release.

Notice of duty to register; probationer or one paying fine. Any person who after the first day of August, 1950, is convicted in the State of California of the commission or attempt to commit any of the above-mentioned offenses and who is released on probation or discharged upon payment of a fine shall, prior to such release or discharge, be informed of his duty to register under this section by the court in which he has been convicted and the court shall require the person to read and sign such form as may be required by the State Bureau of Criminal Identification and Investigation, stating that the duty of the person to register under this section has been explained to him. The court shall obtain the address where the person expects to reside upon his release or discharge and shall report within three days such address to the State Bureau of Criminal Identification and Investigation. The court shall give one copy of the form to the person, and shall send two copies to the State Bureau of Criminal Identification and Investigation, which bureau, in turn, shall forward one copy to the appropriate law enforcement agency having local jurisdiction where the person expects to reside upon his discharge, parole or release. . . .

Sec. 644. Habitual criminals; life imprisonment; exceptional cases, discretion of court; effect upon death penalty.

(a) Every person convicted in this State of the crime of robbery, burglary of the first degree, burglary with explosives, rape with force or violence, arson as defined in Section 447a of this code, murder, assault with intent to commit murder, train wrecking, felonious assault by use of

force or dangerous or deadly weapons, rape or fornication or sodomy or carnal abuse of a child under the age of 14 years, or any act punishable under Section 288 of this code, conspiracy to commit any one or more of the aforementioned felonies, who shall have been previously twice convicted upon charges separately brought and tried, and who shall have served separate terms therefor in any State prison and/or Federal penal institution either in this State or elsewhere, of the crime of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault with intent to commit murder, grand theft, bribery, of a public official, perjury, subornation of perjury, train wrecking, feloniously receiving stolen goods, felonious assault with a deadly weapon, extortion, kidnaping, mayhem, escape from a State prison, rape or fornication or sodomy or carnal abuse of a child under the age of 14 years, or any act punishable under Section 288 of this code, conspiracy to commit any one or more of the aforementioned felonies, shall be adjudged a habitual criminal and shall be punished by imprisonment in the State prison for life;

(b) Every person convicted in this State of the crime of robbery, burglary of the first degree, burglary with explosives, rape with force or violence, arson as defined in Section 447a of this code, murder, assault with intent to commit murder, train wrecking, felonious assault with a deadly weapon, extortion, kidnaping, escape from a State prison by use of force or dangerous or deadly weapons, rape or fornication or sodomy or carnal abuse of a child under the age of 14 years, or any act punishable under Section 288 of this code, conspiracy to commit any one or more of the aforementioned felonies, who shall have been previously three times convicted, upon charges separately brought and tried, and who shall have served separate terms therefor in any State prison and/or Federal penal institution, either in this State or elsewhere, of the crime of robbery, burglary, burglary with explosives, rape with force or violence, arson, murder, assault with intent to commit murder, grand theft, bribery of a public official, perjury, subornation of perjury, train wrecking, feloniously receiving stolen goods, felonious assault with a

deadly weapon, extortion, kidnaping mayhem, escape from a State prison, rape or fornication or sodomy or carnal abuse of a child under the age of 14 years, or any act punishable under Section 288 of this code, conspiracy to commit any one or more of the aforementioned felonies, shall be adjudged an habitual criminal and shall be punished by imprisonment in the State prison for life. . . .

Sec. 647. Vagrancy, definitions; punishment

5. Every lewd or dissolute person, or every person who loiters in or about public toilets in public parts

Is a vagrant, and is punishable by a fine of not exceeding ($500) or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

Sec. 841. Formalities in making arrest; exceptions

Arrest, How Made. The person making the arrest must inform the person to be arrested of the intention to arrest him, of the cause of the arrest, and the authority to make it, except when the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or is pursued immediately after its commission, or after an escape.

Sec. 1203.4. Discharged probationer; change of plea or vacation of verdict; dismissal of charge; release from penalties and disabilities; application; pleading prior conviction in prosecution for subsequent offenses.

Every defendant who has fulfilled the conditions of his probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, shall at any time thereafter be permitted by the court to withdraw his plea of guilty and enter a plea of not guilty; or if he has been convicted after a plea of not guilty, the court shall set aside the verdict of guilty; and in either case the court shall thereupon dismiss the accusations or information against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted. The probationer shall be informed of this

right and privilege in his probation papers. The probationer may make such application and change of plea in person or by attorney, or by the probation officer authorized in writing. . . .

Sec. 17. Felonies and misdemeanors defined; offense punishable as either felony or misdemeanor; commitment to youth authority.

A felony is a crime which is punishable with death or by imprisonment in the State prison. Every other crime is a misdemeanor. When a crime, punishable by imprisonment in the State prison, is also punishable by fine or imprisonment in a county jail, in the discretion of the court, it shall be deemed a misdemeanor for all purposes after a judgment other than imprisonment in the State prison, unless the court commits the defendant to the California Youth Authority. Where a court commits a defendant to the California Youth Authority upon conviction of a crime punishable by imprisonment in the State prison or fine or imprisonment in a county jail, in the discretion of the court, the crime shall be deemed a felony until and unless the court after the person committed has been discharged from control by the California Youth Authority, and only if he was not placed in a State prison by the authority during the period of such control, on application of the person so committed and discharged, makes an order determining that the crime of which he was convicted was a misdemeanor.